

EXHIBIT “L”

City University of New York
New York City College of Technology
New Academic Building
Construction Management/Build Services Agreement

City University Construction Fund
Project No. NY-CUCF-01-08

New York City College of Technology- New Academic Building
Construction Management/Build Services

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS.....	1
ARTICLE 2 - COMPLIANCE WITH LAWS.....	4
ARTICLE 3 - TIME OF ESSENCE	5
ARTICLE 4 - AGREEMENT TO SERVE; LIMITATION OF REMEDIES	5
ARTICLE 5 - REPRESENTATIONS AND WARRANTIES	5
ARTICLE 6 - TERM.....	7
ARTICLE 7 - OVERVIEW OF CONSTRUCTION MANAGER'S SERVICES.....	7
ARTICLE 8 - PROJECT SCHEDULE	7
ARTICLE 9 - OWNERSHIP OF DOCUMENTS	8
ARTICLE 10 - CONSTRUCTION WORK.....	9
ARTICLE 11 - CONSTRUCTION MANAGEMENT SERVICES	18
ARTICLE 12 - CHARACTER OF THE WORK.....	28
ARTICLE 13 - MEANS AND METHODS OF CONSTRUCTION	28
ARTICLE 14 - INSPECTION.....	28
ARTICLE 15 - PROTECTION OF WORK AND OF PERSONS AND PROPERTY	29
ARTICLE 16 - REQUEST FOR INFORMATION OR APPROVAL.....	30
ARTICLE 17 - NOTICE AND DOCUMENTATION OF DELAY DAMAGES.....	30
AND OTHER DAMAGES; PRODUCTION OF FINANCIAL RECORDS.....	30
ARTICLE 18 - DETERMINING ACTUAL DATE OF COMPLETION	32
ARTICLE 19 - EXTENSION OF TIME.....	32
ARTICLE 20 - OCCUPATION OR USE PRIOR TO COMPLETION.....	32
ARTICLE 21 - CHANGED CONDITIONS.....	32
ARTICLE 22 - ASSIGNMENTS.....	33
ARTICLE 23 – LIABILITY OF THE CONSTRUCTION MANAGER:	33
INDEMNIFICATION AND INSURANCE.....	33
ARTICLE 24 - MONEY RETAINED AGAINST CLAIMS	37
ARTICLE 25 - MAINTENANCE AND GUARANTY.....	38
ARTICLE 26 - AGREEMENT CHANGES.....	39
ARTICLE 27 - AUDIT AND EXAMINATION.....	39
ARTICLE 28 - METHODS OF PAYMENT FOR EXTRA WORK	39
ARTICLE 29 - RESOLUTION OF DISPUTES	41
ARTICLE 30 – RECORD KEEPING FOR EXTRA OR DISPUTED WORK.....	43

City University Construction Fund
Project No. NY-CUCF-01-08

New York City College of Technology- New Academic Building
Construction Management/Build Services

ARTICLE 31 - OMITTED WORK	44
ARTICLE 32 - THE DIRECTOR'S REPRESENTATIVE	45
ARTICLE 33 - THE DIRECTOR.....	45
ARTICLE 34 - NO ESTOPPEL.....	45
ARTICLE 35 - EMPLOYEES.....	45
ARTICLE 36 - NO DISCRIMINATION	46
ARTICLE 37 - EQUAL EMPLOYMENT OPPORTUNITY	47
ARTICLE 38 - LABOR LAW REQUIREMENTS	48
ARTICLE 39 - PAYROLL REPORTS	51
ARTICLE 40 - DUST HAZARDS	52
ARTICLE 41 - NOISE CONTROL CODE PROVISIONS.....	52
ARTICLE 42 - PAYMENT TERMS AND CONDITIONS	53
ARTICLE 43 - PROMPT PAYMENT	61
ARTICLE 44 - ACCEPTANCE OF FINAL PAYMENT	62
ARTICLE 45 - RIGHTS OF DIRECTOR TO POSTPONE	62
ARTICLE 45-A - PHASING	63
ARTICLE 46 - TERMINATION FOR CONVENIENCE	63
ARTICLE 47 - DEFAULT, CURE AND TERMINATION FOR CAUSE.....	64
ARTICLE 48 - CLAIMS AND ACTIONS THEREON	66
ARTICLE 49 - SUPPLIES, LABOR, SERVICES, MATERIALS AND TAX EXEMPTION	66
ARTICLE 50 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES.....	67
ARTICLE 51 - RESERVED.....	68
ARTICLE 52 - PARTICIPATION IN AN INTERNATIONAL BOYCOTT	68
ARTICLE 53 - INVESTIGATIONS.....	68
ARTICLE 54 - ALL PRIOR WRITTEN OR ORAL AGREEMENTS EXCLUDED	69
ARTICLE 55 - HEADINGS NOT BINDING	70
ARTICLE 56 - ERRORS	70
ARTICLE 57 - UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT.....	70
ARTICLE 58 - ALL LEGAL PROVISIONS DEEMED INCLUDED	70
ARTICLE 59 - WAIVER AND SUSPENSION.....	70
ARTICLE 60 - ALL DEFENSES RESERVED	70
ARTICLE 61 - CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE	70
ARTICLE 62 - SERVICES OF NOTICES	70
ARTICLE 63 - MODIFICATION	71
ARTICLE 64 - MACBRIDE PRINCIPLES PROVISIONS.....	71

NYSCEF DOC. NO. 5

RECEIVED NYSCEF: 08/21/2019

City University Construction Fund
Project No. NY-CUCF-01-08New York City College of Technology- New Academic Building
Construction Management/Build Services

ARTICLE 65 – ULTRA LOW SULFUR DIESEL FUEL	73
ARTICLE 66 – ULTRA LOW SULFUR DIESEL FUEL	76
COORDINATED CONSTRUCTION ACT FOR LOWER MANHATTAN.....	76
ARTICLE 67 - VENDEX QUESTIONNAIRES.....	77
ARTICLE 68 - PARTICIPATION BY MINORITY-OWNED AND	77
WOMEN-OWNED BUSINESS ENTERPRISES.....	77
EXHIBIT A.....	81
CONTRACT INFORMATION.....	81
EXHIBIT B.....	82
STAFFING PLAN AND PROJECT SCHEDULE	82
EXHIBIT C.....	103
FEE CURVE FOR PROFIT	103
EXHIBIT D.....	106
PARTIAL PAYMENT FOR STORED MATERIAL	106
EXHIBIT E.....	108
FORM OF BID, PERFORMANCE, AND PAYMENT BONDS.....	108
EXHIBIT F.....	121
ASSIGNMENT OF BONDS	121
EXHIBIT G.....	123
M/WBE REQUIREMENTS	124
EXHIBIT H.....	129
SAFETY REQUIREMENTS.....	ERROR! BOOKMARK NOT DEFINED.
EXHIBIT I.....	137
INSURANCE REQUIREMENTS.....	137

City University Construction Fund
Project No. NY-CUCF-01-08

New York City College of Technology- New Academic Building
Construction Management/Build Services

subcontract Work, the subcontract price shall be increased by the difference, plus percentages for overhead and profit as provided in Articles 28.1.8 and 28.1.9. If the cost of the omitted or reduced subcontract Work exceeds the cost of the Extra Work, then the subcontract price shall be reduced by the difference.

28.5 Where the Construction Manager and the Contracting Officer agree upon another method of payment for Extra Work in accordance with Article 26.2, or for Extra Work ordered in connection with omitted work, such method, subject to audit, may, at the sole option of the Director, be substituted for the cost-plus-a-percentage method; provided in Article 28.1; provided, however, that if the Extra Work is performed by a sub-subcontractor engaged by a Subcontractor, the Subcontractor shall not be entitled to receive more than an additional allowance of five (5%) percent for overhead and profit over the cost of such sub-subcontractor's Work as computed in accordance with Article 28.1.

28.6 Unless the parties agree on a lump-sum payment for Extra Work, requests for payment for Extra Work performed by construction Subcontractors shall be accompanied by signed time sheets, documenting by date the actual hours worked by specific personnel for whom payment is requested, and any other data as may be requested by the Director. Under an agreement for a lump-sum payment for Extra Work, the Construction Manager shall obtain from the performing Subcontractor(s) all documentation required for a requisition for payment for Work completed.

28.7 The Construction Manager shall not be entitled to any mark-up whatsoever on payments for Extra Work ordered pursuant to Article 26 hereof performed by Subcontractors, except as provided for under Article 42.2.3 below,

28.8 Overrun of Unit Price Item: The provisions set forth below shall apply to overruns of unit price items which the Construction Manager, through its Subcontractor, is directed to provide. An overrun is any quantity of a unit price item which the Construction Manager, through its Subcontractor, is directed to provide which is in excess of one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule.

28.8.1 For any unit price item, the Construction Manager's Subcontractor will be paid at the unit price bid for any quantity up to one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule. If during the progress of the Work, the actual quantity of any unit price item required to complete the Work approaches the estimated quantity for that item, and due to errors, site conditions, changes in design, or any other reason, it appears that the actual quantity of any unit price item necessary to complete the Work will exceed the estimated quantity for that item by twenty-five (25%) percent, the Construction Manager shall immediately notify the Director's Representative of such anticipated overrun. The Construction Manager's Subcontractor shall not be compensated for any quantity of a unit price item provided which is in excess of one hundred twenty-five (125%) percent of the estimate quantity for that item set forth in the bid schedule without written authorization from the Director's Representative.

28.8.2 If the actual quantity of any unit price item necessary to complete the Work will exceed one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule, CUCF reserves the right and the Construction Manager, through its Subcontractor, agrees to negotiate a new unit price for such item. In no event shall such negotiated new price exceed the unit bid price. If CUCF and Construction Manager, through its Subcontractor, cannot agree on a new unit price, then CUCF shall order the Construction Manager and the Construction Manager, through its Subcontractor agrees to provide additional quantities of the item on a time and material basis for the actual and reasonable cost as determined under Article 28.1, but in no event at a unit price exceeding the unit price bid.

ARTICLE 29 - RESOLUTION OF DISPUTES

29.1 Generally

29.1.1. In relation to only this Agreement, all claims, controversies or disputes the Construction Manager may have against CUCF, including, without limitation, all claims, controversies or disputes a Subcontractor or a supplier may have in relation to this Agreement, (each a "Dispute") to the extent permitted by law, shall be resolved exclusively by the procedure set forth in this Article. Without limitation, this procedure covers Disputes concerning: (1)

City University Construction Fund
Project No. NY-CUCF-01-08

New York City College of Technology- New Academic Building
Construction Management/Build Services

the scope of the Work related to this Agreement, (2) any direction given by CUCF or any governmental agency, (3) the performance by CUCF of its obligations under this Agreement, (4) the interpretation of this Agreement or of the Contract Documents, (5) if an amount, and what amount, if any, is to be paid for Work or Extra Work or disputed Work performed in connection with this Agreement, (6) every payment to and by the Construction Manager, (7) the conformity of the Work with this Agreement or the acceptability and quality of any portion or all of the Work, and (8) any combination of these. Independent of any other provision, time is of the essence to this procedure. The Construction Manager and its Subcontractors and suppliers grant CUCF the right to resolve any claim, controversy, or dispute between or amongst them arising under or related to the Agreement, their subcontract, or the Project, including, without limitation, the right of CUCF to resolve any of these by direct payment on behalf of the Construction Manager to a Subcontractor or supplier with a corresponding charge against the Construction Manager's balance under this Agreement.

29.1.2. The terms of this Agreement shall remain in full force and effect during the period this dispute resolution procedure is being followed with respect to any Dispute. The Construction Manager agrees to continue to perform its obligations hereunder during this period in accordance with this Agreement and as directed by CUCF, including, without limitation, any and all matters covered by the Dispute. Failure of the Construction Manager to continue without delay to discharge its obligations hereunder, including, without limitation, to perform any Work, disputed Work and Extra Work as directed, shall constitute a material breach of this Agreement and a waiver by the Construction Manager of each Dispute then under review in this procedure.

29.1.3. During the investigations integral to this procedure, each party shall provide to the other party copies of all information that each provides in response to any requests for information made by the Executive Director of the Department of Design, Construction and Management of CUNY (the "Executive Director") and by the Vice Chancellor for Facilities Planning, Construction and Management of CUNY (the "Vice Chancellor").

29.1.4. In any event the Construction Manager, either on its own behalf or on behalf of a subcontractor or supplier, fails (a) to submit timely any Notice of Dispute, Dispute Report, Notice of Appeal, or any other information or document required or requested to be provided or (b) to attend without good cause any meeting it is required or requested to attend, pursuant to this procedure, its Dispute shall be deemed waived, and CUCF shall be deemed released of all liability for it.

29.1.5. As either may deem appropriate from time to time, the Executive Director and Vice Chancellor each may obtain technical and other expertise for assistance in evaluating the information related to a Dispute. Each may use mediation and select as a neutral mediator a CUNY employee, who is from a department or office not under the supervision of the Executive Director or Vice Chancellor, or hire a neutral mediator, who is not employed by CUCF or CUNY; the Construction Manager agrees to pay CUCF one-half of any fee for the services of a mediator not employed by CUCF or CUNY. All mediation sessions shall be confidential and the parties agree that no mediation session may be the sole source of any information used in any other forum, such as litigation of the Dispute.

29.2 Commencement

Within fifteen (15) business days of any act or omission that gives rise to a Dispute, the Construction Manager, both on its own behalf and on behalf of its subcontractors and suppliers, must submit to the Executive Director written notice of its Dispute. In each such notice, the Construction Manager must identify (a) the date on which the Dispute arose, and (b) a brief description of it (with the elements specified in (a) and (b) hereof comprising a "Notice of Dispute"). The Construction Manager may add other information it deems relevant. This notice requirement shall not replace any other notice requirement set forth in this Agreement. For cause, the Executive Director may extend in writing by no more than ten (10) business days the period within which the Construction Manager may file the Notice of Dispute.

29.3 Filing the Dispute

City University Construction Fund
Project No. NY-CUCF-01-08

New York City College of Technology- New Academic Building
Construction Management/Build Services

Within twenty (20) business days after submission of a Notice of Dispute, the Construction Manager must submit to the Executive Director an original and one copy (a) of a full written description of its Dispute, (b) of the resolution it requests CUCF to adopt, (c) of all documentation related to the Dispute, such as written orders from CUCF, and, as to any resolution that includes a payment of any sum, all supporting documentation that specifies the sum at issue and all computations required to arrive at the sum, and (d) of any other findings or decisions the Construction Manager asks CUCF to reach (with all of these elements comprising a "Dispute Report"). The Construction Manager may add other information it deems relevant. For cause, the Executive Director and the Vice Chancellor may extend in writing by no more than ten (10) business days the period within which the Construction Manager may file the Dispute Report.

29.4 Investigation, Meetings, and Notice of Appeal

29.4.1. After receipt of the Dispute Report, the Executive Director shall investigate it, may require additional information from CUCF staff and from the Construction Manager, and may convene meetings with the Construction Manager, including the relevant sub-professional, and CUCF staff to resolve the Dispute. The Executive Director may resolve the Dispute by negotiating terms acceptable to both the Construction Manager and CUCF (a "Negotiated Resolution"). The Executive Director shall put in writing any Negotiated Resolution to be executed by the Construction Manager and CUCF. Alternatively, after completing this investigation of the Dispute, the Executive Director may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written decision (a "Unilateral Resolution") that CUCF shall send to the Construction Manager by certified mail, return receipt requested, and to the CUCF staff for implementation. Any Unilateral Resolution rendered by the Executive Director, and not timely appealed by the Construction Manager pursuant to the procedure described below, shall be final and binding upon the parties upon expiration of the tenth day after the Construction Manager receives any such Unilateral Resolution.

29.4.2. The Construction Manager, on its own behalf and on behalf of a sub-professional, may request an appeal (a) if the Executive Director is unable to reach a Negotiated Resolution or (b) the Construction Manager receives a Unilateral Resolution with which the Construction Manager disagrees. The Construction Manager must commence any such appeal by submitting a written notice to the Vice Chancellor requesting the Vice Chancellor to resolve the Dispute or to revise the Unilateral Resolution, as the case may be ("Notice of Appeal"). The Construction Manager must file the Notice of Appeal within thirty (30) consecutive calendar days after the Executive Director receives the Dispute Report in the case of a failure to reach a Negotiated Resolution or, within ten (10) consecutive calendar days after the Construction Manager receives any Unilateral Resolution with which the Construction Manager disagrees. In addition, the Construction Manager must submit to the Executive Director a copy of the Notice of Appeal.

29.5 Appeal

After receipt of the Construction Manager's Notice of Appeal, the Vice Chancellor shall investigate the Dispute, may require additional information from CUCF staff and from the Construction Manager, and may meet with the Construction Manager, including any relevant sub-professional, and CUCF staff to resolve the Dispute. The Vice Chancellor may resolve the Construction Manager's Dispute by negotiating terms acceptable to both the Construction Manager and CUCF. The Vice Chancellor shall put in writing any such resolution to be executed by the Construction Manager and the CUCF. Alternatively, after completing this investigation of the Dispute, the Vice Chancellor may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written final decision that CUCF shall provide to the Construction Manager and to the Executive Director for implementation. If the Vice Chancellor is unable to resolve the Dispute within thirty (30) consecutive calendar days of receiving the Notice of Appeal or if within ten (10) consecutive calendar days after the Construction Manager receives from the Vice Chancellor a written final decision with which the Construction Manager disagrees, the Construction Manager, on its own behalf and on behalf of a sub-professional, agrees that its only remedy shall be an appeal pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York.

ARTICLE 30 – RECORD KEEPING FOR EXTRA OR DISPUTED WORK